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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

RICHARD F., Petitioner, v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; ORANGE COUNTY SOCIAL SERVICES AGENCY et al., Real Parties in Interest.	G031460 (Super. Ct. Nos. DP-005940, DP-005941) O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, Richard E. Behn, Judge. Petition denied.

Law Offices of Arthur J. LaCilento and Arthur J. LaCilento for Petitioner.

Benjamin P. de Mayo, County Counsel, and Rachel M. Bavis, Deputy County Counsel, for Real Party in Interest Orange County Social Services Agency.

No appearance for the Minors.

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Richard F. seeks extraordinary relief from Orange County Juvenile Court orders terminating reunification services and scheduling a Welfare and Institutions Code[1] section 366.26 permanency hearing for his twin daughters, Miriam and Merrisa F. He contends the court abused its discretion when it declined to offer him additional reasonable reunification services, and complains of the court's failure to consider placement with the maternal grandfather (§ 361.3). Having reviewed the petition on the merits, we deny the requested relief.

I

Twin daughters, Miriam and Merrisa, were born on December 28, 2001, with a positive toxicology screen for opiates. The Orange County Social Services Agency (SSA) filed a section 300 petition alleging the children were at a substantial risk of physical harm as a result of their mother's (Denise R.) use of controlled substances and of abuse or neglect similar to the harm suffered by their siblings. (§ 300, subds. (b), (j).)[2] In the preceding two years, six other children had been removed from mother's custody as a consequence of her substance abuse problems and associated neglect. Both girls were placed with a foster/potential adoptive family in February 2002.

At the time of the birth, Richard was incarcerated and awaiting trial on various criminal charges. Based on Richard's strong desire to maintain a relationship with his daughters, the court ordered SSA to implement a program of reunification services and set the matter for a six-month review. At the six-month review, held in November 2002, the court found there was no substantial probability the children could be returned to Richard within the next six months. Reunification services were terminated and the court set a 366.26 hearing for March 13, 2003.

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[1] All further statutory references are to the Welfare and Institutions Code.

[2] Denise apparently ingested codeine during the pregnancy. SSA did not offer her reunification services (§ 361.5, subds. (b)(1) [absent parent], (b)(10) [previous failure to reunify]) and she is not a party to this proceeding.

II

The ultimate goal of the juvenile dependency system is to preserve the family and reunite children with their parents whenever possible. Toward this end, parents are offered "services" designed to correct or eliminate the problems leading to judicial intervention and help them regain custody of their children. But the obligation to provide "reasonable" services does not mean a parent is entitled to "perfect" services: "In almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect. *The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances*." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547, italics added.) Keeping that principle in mind, we turn to the issue of the sufficiency of the evidence to support a finding reasonable services were provided.

Richard contends the services offered were not reasonable because SSA failed to offer programs for substance abuse treatment, including drug counseling and testing referrals, and substance abuse training information. (See § 361.5, subd. (e)(1) [incarcerated parent entitled to reasonable services unless the child would suffer detriment].)[3] Only 23 at the time his daughters were born, Richard started using heroin at age 12. Unable to stay off drugs, he was a frequent patron of the prison system. SSA proposed an "incarcerated parent" case plan, requiring Richard to participate in any

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[3] Section 366.21, subdivision (e), provides in substance that if the court cannot return the child to her parents at the six-month review and the child was under three when removed, the court may schedule a .26 hearing if it finds by clear and convincing evidence the parent did not participate regularly and make substantive progress in a court-ordered treatment plan. If the court finds there is a substantial probability the child may be returned within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing. Richard does not attack the court's finding he did not participate regularly and make substantive progress in the court-ordered treatment plan.

inmate services related to drug treatment, parent education, counseling, and vocational training. If no such services were available, he was obligated to ask the social worker for an appropriate reading list. Richard was to have monthly visitation as long as it could be accomplished in a "no barrier" environment and the girls could reasonably travel to the visits without "undue discomfort or interference" with their daily schedule.

Richard's past returned to haunt him, as he was convicted and sentenced to a 32-month prison term with an October 2003 release date.[4] No services were available at the state prison reception center in Wasco. A prison counselor recommended transfer to San Diego or Chino, where services were more plentiful. One month later, in June 2002, Richard was transported to Jamestown, a facility offering only 12-step meetings and parenting classes.

A prison counselor suggested Richard obtain a "hardship letter" but noted no transfer would be possible until May or June 2003. The social worker supplied a hardship letter in August 2002. In September, the prison counselor reported he was awaiting Richard's "Youth Active" file, but it appeared Richard was eligible for a low-level security facility where substance abuse treatment programs were not available.

In a report submitted for the six-month review, the social worker stated Richard had not met the goals of his case plan. She had supplied him with parenting education literature and he demonstrated some parenting knowledge in essays and a conversation with the foster parents. He had requested photographs of the children, and wrote to them three times a month, expressing hope for visits when he was transferred to a closer facility. But he had no access to substance abuse monitoring or treatment. Visits with the girls had been impossible.

The social worker wrote to father on a monthly basis, sending a reading list of parenting education literature and copies of chapters from parenting books. Richard

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[4] Richard testified an early release (June 2003) might be possible through a work furlough program.

was on a waiting list for a parenting class. Richard also received blank paper and pre-paid envelopes, and cards to verify attendance and participation in any classes and programs. The social worker arranged one visit at the jail one week before the six-month review, but the children cried continuously and the entire episode lasted only five minutes. She also coordinated a phone call with the foster parents and sent photographs of the children and tracings of their hands.

The adequacy of SSA's efforts to provide suitable services is judged according to the circumstances of the particular case. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1362.) Here, the social worker did what she could to arrange a transfer to a facility offering the services Richard needed. She supplied a hardship letter after his arrival at Jamestown. No appropriate programs were available in Wasco or Jamestown. True, the social worker was aware of publications on substance abuse currently available for purchase, and she could probably have supplied a reading list. But it was highly unlikely the answer to Richard's longstanding heroin addiction and criminal history could be found in any book, and such texts could only have been of minimal aid in his quest to regain custody of the girls.

For better or worse, the juvenile dependency system grants parents but a small window of opportunity to regain custody of their young children. (See § 361.5, subd. (a)(2) [court-ordered services shall not exceed a period of six months from the date the child enters foster care where child under three on date of initial removal from physical custody of parent].) Here, efforts were made to facilitate reunification, but it was, for all intents and purposes, a lost cause from the outset. A father who has no existing relationship with a child and is also incarcerated for a substantial length of time faces an uphill battle. The statutory scheme expresses a preference that infants and toddlers should have stable and permanent homes as soon as possible. Under the best of circumstances, Richard was not likely to have rehabilitated himself sufficiently by June or October 2003 to warrant a return of physical custody. And this was well beyond the

statutory date by which young children must be in permanent homes. (See § 361.5, subd. (a) [court-ordered services may be extended to maximum of 18 months from date of removal if permanent plan is for child to be returned and safely maintained in the home within the extended time period; court shall extend time only if there is substantial probability child will be returned within extended time period or that reasonable services have not been provided].)

In sum, the juvenile court's findings and its determination not to afford Richard additional services were supported by substantial evidence. (Cf. *Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1165.) There are no grounds for reversal.

III

No suitable relatives had presented themselves when the girls were initially placed with a foster/adoptive family in February 2002 or at the dispositional hearing in April 2002.[5] In June, the girls' maternal grandfather Robert R., surfaced and sought evaluation for placement. The social worker initiated a review of the grandfather's Tucson residence and was advised it was acceptable. But the social worker recommended the children be kept in their current placement, noting the caretakers were interested in adopting, the grandfather had no relationship with (and had never asked to see) the girls, and the children were placed with a half-sibling.

The issue of relative placement was neither raised nor considered at the November 2002 review. But Richard now faults the juvenile court for its failure to give meaningful consideration to a relative placement pursuant to section 361.3.[6] The

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[5] Although Richard appealed from the disposition judgment (G030608), his lawyer found no arguable issue pursuant to *In re Sade C.* (1996) 13 Cal.4th 952, and this court dismissed the appeal when Richard did not file a personal brief. Accordingly, Richard may not raise any issue concerning the disposition or initial placement.

[6] Section 361.3, subdivision (a), provides, in pertinent part: "In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the

problem with this argument, as SSA correctly notes, is that Richard has waived any such claim by his failure to raise it below. (*In re Daniel D.* (1994) 24 Cal.App.4th 1823, 1831.)[7] No more need be said on this issue.

The petition for extraordinary writ and request for a stay of the March 13, 2003 permanency hearing are denied.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.

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child for placement of the child with the relative." Subdivision (d) provides, "Subsequent to the hearing conducted pursuant to Section 358 [i.e., the disposition hearing], *whenever a new placement of the child must be made*, consideration for placement shall again be given as described in this section to relatives who have not been found to be unsuitable and who will fulfill the child's reunification or permanent plan requirements. In addition to the factors described in subdivision (a), the county social worker shall consider whether the relative has established and maintained a relationship with the child." (Italics added.) By its own terms, section 361.3, applies only when "a child is removed from the physical custody of his or her parents pursuant to Section 361," or "whenever a new placement of the child must be made." This was not the case here. By the time grandfather came forward and was approved, the children had been in a prospective adoptive home for 10 months. (Cf. *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1027 [new placement necessary because foster family did not want to adopt].)

[7] SSA also asserts he does not have standing to raise the issue. (See *Cesar V. v. Superior Court*, *supra*, 91 Cal.App.4th 1023 [in light of parent's stipulation to terminate reunification services, court did not see how denial of placement with relative affected parent's interest in reunification with the children]; but see *In re Daniel D.*, *supra*, 24 Cal.App.4th at pp. 1833-1834 [mother apparently had standing to raise denial of relative placement preference before termination of reunification services where such placement arguably would have affected the mother's chances at reunification].)